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No. 98-830

Supreme Court, U.S.
FILED
DEC 23 1998
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

AMOCO PRODUCTION COMPANY, on behalf of itself and the class it represents,

Petitioners,

vs.

SOUTHERN UTE INDIAN TRIBE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF OF *AMICI CURIAE* THE COAL BED METHANE AD HOC COMMITTEE, THE WYOMING INDEPENDENT PRODUCERS' ASSOCIATION AND THE INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

The Coal Bed Methane Ad Hoc Committee ("the Committee"), the Wyoming Independent Producers' Association ("WIPA"), and the Independent Petroleum Association of America ("IPAA") file this brief *amici curiae* in support of petitioner Amoco Production Company ("Amoco").[1] The decision below reopens a question previously settled by the Department of the Interior: Under 30 U.S.C. §§ 81-85, when Congress reserved "coal" to the federal government from the remaining fee simple estate patented to citizens and States, did it also reserve the natural gas known as coal bed methane?

The Committee is comprised of Wyoming landowners and oil and gas companies. The Committee's efforts are also supported by other landowners, a local bank, and a pipeline company. All are directly interested in the development of the coal bed methane resources in the Powder River play in northern Wyoming, a play that may contain 40 trillion cubic feet of natural gas. (Petitioners' Appendix ("Pet. App.") 181a.) The landowners hold patents, subject to the reservation of "coal" under 30 U.S.C. §§ 81-85, issued by the Department of the Interior under various statutes disposing of the public lands to encourage the settlement and cultivation of our western States. The oil and gas companies have received oil and gas leases from these and other landowners. The companies will need to obtain additional leases as their knowledge of the geology of

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1. The parties have consented in writing to the filing of this brief. Their letters have been filed with the Clerk of the Court. Counsel for the parties did not write any part of this brief; the undersigned counsel is its sole author. Persons other than the *amici curiae* or their members who made a monetary contribution to the preparation of the brief are listed in Appendix A at the end of this brief. The members of the Committee are also identified in Appendix A.

the play expands. The bank has loaned funds for development of coal bed methane leases on the assumption that title to the gas rested with Wyoming land owners, not with the federal government and its successors in interest. The pipeline company has announced its plan to build a 24-inch gas pipeline to transport the projected high volumes of coal bed methane production from the Powder River Basin.

WIPA and IPAA represent, on a state and national level respectively, thousands of independent producers of natural gas and oil on all issues affecting their members' interests. The decision below has created a cloud over the title to coal bed methane in a vast area of the country. Relying on certain governmental statistics which may be incompletely compiled, Amoco has estimated that approximately 20 million acres of land are affected by the decision. (Pet. 24 n.13.) Precision is impossible without hundreds of thousands of title examinations, but the estimate may be low. Between the start of President Roosevelt's coal-land withdrawals in 1906 and the passage of the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*, the Land Classification Board of the United States Geological Survey ("USGS") reviewed approximately 144 million acres of withdrawals of potential coal lands in thirteen western states, finding that 30.3 million acres qualified as coal lands, 74.8 million acres did not, and the 39.9 million acres still pending review in 1920 were left unclassified because the Mineral Leasing Act rendered coal-lands classification moot. 41st ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 145-46 (1920). As explained more fully below, patents under the statutes at issue could have been granted on any of these withdrawn lands. WIPA's and IPAA's members are vitally interested in resolving the doubts created by the decision below so that they may proceed with the development of potentially tens of trillions of cubic feet of coal bed methane resources. (Pet. App. 181a.)

To facilitate the development of this largely untapped resource, the United States Department of the Interior published a formal opinion in 1981, addressing the effect of the reservation of "coal" under the two statutes at issue here: an Act of March 3, 1909, 35 Stat. 844 ("the 1909 Act") and an Act of June 22, 1910, 36 Stat. 584 ("the 1910 Act"). After careful analysis, the Solicitor concluded that "coalbed gas was not reserved with federal coal in nonmineral patents issued subject to the 1909 and 1910 Acts." (Pet. App. 150a.)

In reliance on that opinion, the Committee's members and other landowners, banks, and businesses entered into oil and gas leases, obtained drilling and environmental permits, secured loans, and commenced the exploration and development of coal bed methane resources. These resources underlie some of the 22 million acres of potential coal lands in Wyoming once withdrawn by the Roosevelt Administration ninety years ago. 35th ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 132 (1914). Within the last three years, 2,250 coal bed methane wells have been drilled or permitted in Campbell County, Wyoming, alone. In the last eighteen months, the Federal Energy Regulatory Commission has issued a series of orders authorizing additional pipeline facilities within Wyoming to accommodate the anticipated increase in production. *Wyoming Interstate Company, Ltd.*, 84 FERC ¶ 61,007 (1998); *MIGC, Inc.*, 84 FERC ¶ 61,009 (1998); *MIGC, Inc.*, 79 FERC ¶ 62,135 (1997).

In response to the decision below, and at the urging of these *amici*, the 105th Congress enacted S. 2500, Pub. L. No. 105-367, 112 Stat. 3313 (1998). The basic purpose of the bill is to protect investments in existing coal bed methane leases and in certain exploration and development activities already under permit by landowners on their own unleased lands. *Id.* § 1. These provisions disavow federal claims to certain "coalbed methane

production" described in the legislation, but do not otherwise waive claims of title the government may have resulting from the Tenth Circuit's interpretation in the decision below. *Id.* § 1(b)(5). The provisions do not benefit leases issued after the date of enactment, November 10, 1998, including a lease needed because of the lapse of a pre-Act lease. *Id.* § 1(b)(1). Nor do they affect in any way title to coal bed methane with respect to lands in which the reserved federal coal estate or reserved federal oil and gas estate has been transferred to third parties. *Id.* § 1(b)(3) & (4).

Congress enacted S. 2500 with its sponsors' hope that this Court would issue a writ of certiorari to address "the potentially disastrous effects of the [Tenth Circuit] Court's ruling. . . ." 144 CONG. REC. H10939 (daily ed. Oct. 15, 1998) (remarks of Rep. Rahall). These effects are already being felt by these *amici* and their supporters. The landowners can issue no new leases. Indeed, they cannot even re-lease their land upon the lapse of a current lease. Nor can they drill on their own land if they lack a state drilling permit based on a pre-Act application specifically targeting "a coal formation." Pub. L. 105-367 § 1(a)(2). The oil and gas companies have stopped obtaining new leases because of the uncertainty over title. As a result, their evolving plans to expand the exploration and development of the play are stymied. The pipeline faces the significant new risk that, because of slowed or curtailed development, oil and gas producers will not be able to keep the pipeline full of gas for shipment over time, thus impairing the profitability of the venture. Going forward, all three groups face the highly speculative task of sorting out, for title and royalty purposes, the coal bed methane from all other methane to be produced. (Pet. App. 63a n.7.)

The decision below violates the statutes under which the predecessors of the Committee's landowners — and hundreds

of thousands of like-situated holders of federal patents — were encouraged to settle our western States. The decision largely nationalizes a previously privately-owned mineral right, unfairly depriving the owners of one of the rights they *earned* and own under the patents. Furthermore, the Nation's energy and environmental strategies call for increased reliance over the long term on natural gas. The uncertainty created by the decision below impedes the pursuit of those strategies. The Committee, WIPA, and IPAA therefore urge the Court to grant Amoco's petition and reverse the Tenth Circuit's rejection of the well-reasoned position of the Department of the Interior that the reservation of "coal" in federal land patents did not reserve title to methane associated with the coal.

SUMMARY OF ARGUMENT

The court of appeals found Congress' intent "ambiguous" as to whether coal bed methane was included in the reservation of "coal" in the 1909 and 1910 Acts. (Pet. App. 8a-9a.) The court admitted "Congress' awareness [in 1909] that CBM [coal bed methane] was released as a hazardous byproduct of coal mining" (Pet. App. 20a) and the "fact that CBM could not be commercially extracted from coal in 1909. . . ." (Pet. App. 21a.) The court even quoted with approval the observation of the Pennsylvania Supreme Court that, despite their proximity in coal seams, "[c]oal and coalbed gas are, nevertheless, separate physical entities." (Pet. App. 22a.)

The court of appeals' concessions make its ruling indefensible. The history surrounding the enactment of the 1909 and 1910 Acts demonstrates that persons *and States, see State of Utah*, 38 Pub. Lands Dec. 245 (1909) (selections by state subject to coal reservation), receiving patents subject to their provisions received full title to the land save only for the one mineral the land was deemed "valuable for:" coal. 30 U.S.C.

§§ 81, 83 & 85. All other minerals which, at the time the patent issued, the land was not thought "valuable for" passed to the patentee along with the rights to the surface. Indeed, even known deposits of coal continued to be patented without reservation because the deposits were not "valuable" enough. Plainly, lands patented subject to these two Acts were not deemed valuable for coal bed methane. Therefore, other than the reservation of the coal itself, patentees under these Acts were "entitled to a patent without reservation. . . ." *Circular*, 38 Pub. Lands Dec. 183, 184 (1909) (construing Act of March 3, 1909).

Furthermore, even if the term "coal" could be found ambiguous, the court of appeals was wrong not to defer to the views of the Department of the Interior. The court's refusal not only raises a serious question under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), as Amoco's petition ably shows (Pet. 21-23), but also demonstrates disregard for this Court's longstanding deference "to decisions of the Land Department," *United States v. Hammers*, 221 U.S. 220, 225-26 (1911), in construing the public land laws. When faced with ambiguity in those laws, as this Court has indicated, "we must turn as a help to its meaning, *indeed, in such case, as determining its meaning*, to the practice of the officers whose duty it was to construe and administer [them]." *Id.* at 228 (emphasis added). *See also Burke v. Southern Pacific RR Co.*, 234 U.S. 669, 677-78 (1914) (the "administration of these [public land] laws has rested with the Land Department, and therefore its course of action . . . requires to be noticed"). A chief goal of this policy of deference toward the Interior Department has always been to promote certainty of land titles resulting from the disposal of public lands. *Barden v. Northern Pacific RR Co.*, 154 U.S. 288, 326 (1894). It is thus with irony and error that the Tenth Circuit disregarded the contemporaneous deference principle familiar to the very Congress enacting the statutes at issue.

Because the ruling below has cast a cloud over title to extensive coal bed methane resources under tens of millions of acres of lands currently or imminently under development in the West, this Court's immediate correction is required.

ARGUMENT

I.

THE 1909 AND 1910 ACTS DID NOT RESERVE TO THE GOVERNMENT THE METHANE IN COAL SEAMS

As it should, the Tenth Circuit acknowledged that the task before it was one of effecting "the will of Congress. . . ." (Pet. App. 10a, quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1982)). Noting that Congress did not expressly mention coal bed methane in the 1909 and 1910 Acts, however, the Tenth Circuit framed the issue before it with beguiling finesse. Invoking the interpretive guideline that "land grants are construed favorably to the Government" and "that nothing passes except what is conveyed in clear language," (Pet. App. 11a quoting *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 59 (1983)), the court placed the "burden" upon Amoco "to dispel any ambiguity in the construction of the coal reservation." (*Id.*) Finding at each opportunity that the Acts were ambiguous as to whether coal included methane associated with the coal (Pet. App. 14a-24a, 27a-30a), the court found no clear language conveying the coal bed methane to the patentees. "Rather," the court concluded, "where the commercial value of CBM was unappreciated at the time of the enactment, the texts of these acts gives us no particular indication" of Congress' intent. (Pet. App. 21a.)

Even the briefest history of public land law between the Civil War and World War I shows that the court has stood Congress' intent in passing the 1909 and 1910 Acts on its head. From the Civil War to the turn of the century, the general policy of the United States was to encourage the settlement and improvement of the western states by granting patents — full fee simple title — to persons developing the public lands for the various purposes specified by statute. The homestead law entitled citizens to enter quarter-sections of "unappropriated public lands," 43 U.S.C. § 161, "for the purpose of actual settlement and cultivation. . . ." 43 U.S.C. § 162. Similarly, the desert-land law gave citizens the right to enter one-half sections of "desert land" and obtain patents to them upon undertaking "the necessary irrigation, reclamation, and cultivation thereof. . . ." 43 U.S.C. §§ 321 & 328.

Generally, lands known to be valuable for certain minerals could not be entered and patented under the homestead and desert land laws, but instead were available for purchase in fee simple under other statutes. *See Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 47-48 (1983) (explaining former land classification system). For example, "tracts embracing coal-beds or coal-fields" with "known mines" were unavailable for private entry under the non-mineral land laws. *Colorado Coal & Iron Co. v. United States*, 123 U.S. 307, 324-25 (1887). However, Congress was well-aware that entrymen obtaining their patents under the public land laws nevertheless received mineral rights which might well become highly valuable in the future. Whether lands were valuable for minerals was to "be determined according to the facts in existence at the time" the patent issued. *Id.* at 328. "A change in the conditions . . . whereby new discoveries are made . . . cannot affect the title as it passed. . . ." *Id.*

By the time Congress considered the 1909 and 1910 Acts, therefore, it was well-known that the grant of full fee patents

to entrymen, which included mineral rights that could prove valuable in the future, was the key to the national plan "to induce settlement, cultivation, and the establishment of homes upon the public lands." *Ware v. United States*, 154 F. 577, 584 (8th Cir. 1907). The accepted rule of construction was "that the statutes should not be construed strictly and harshly against the homesteader, but that the land laws should be administered liberally to fulfill their purpose," *United States v. Mills*, 190 F. 513, 521 (5th Cir. 1911), a rule of construction made particularly apt by Congress' decision to provide special homesteading rights to veterans of the Union army. *See generally Anderson v. Clune*, 269 U.S. 140 (1925) (discussing soldiers' additional homestead rights). *Accord Shiver v. United States*, 159 U.S. 491 (1895) (contrary to the literal interpretation of the statutes, the Court holds that entrymen had a right to cut timber needed to establish a homestead). The rule of liberal construction also reflected that, like railroad land grants, homestead and desert-land patents were not gifts from the federal sovereign, but instead were the *quid pro quo* for years of labor and investment by entrymen. In other words, an entryman "*earned* the right to the lands described" in the patent. *Burke*, 234 U.S. at 680 (emphasis added).

It was against this backdrop that President Theodore Roosevelt approached problems his advisors perceived in the public land laws, especially as to coal lands. Believing that those laws inhibited the scientific management of vital resources such as water power, timber, forage, and minerals, President Roosevelt appointed a Public Lands Commission on October 22, 1903, to report on revisions. S. Hayes, CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 1890-1920 at 67 (1975). The Commission's first "partial report," issued in March 1904, alleged that "abuses" permeated the administration of the land laws and that the structure of the laws themselves often thwarted congressional

goals. S. Doc. No. 189, 58th Cong., 3d Sess., "Report of the Public Lands Commission" vi-vii & viii (1905) ("Commission Report"). Its second "partial report" in February 1905 urged that "the first essential for putting the remaining public lands to their best use is to ascertain what that best use is by a preliminary study and classification of them. . . ." Commission Report xiv.

Dissatisfied by congressional inaction on his Commission's report, President Roosevelt seized upon the allegations of fraud to further his agenda of more efficient use and federal management of the public lands. In a December 17, 1906, message to the Congress, Roosevelt explained that he had earlier that year directed the Secretary of the Interior "to allow no patent to be issued to public land under any law until by an examination on the ground actual compliance with that law has been found to exist." S. Doc. No. 141, 59th Cong., 2d Sess. 2 (1906) ("S. Doc. No. 141"). Also that year Roosevelt "withdrew approximately 64 million acres of lands thought to contain coal from all forms of entry. . . ." *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 48-49 (1983). The withdrawals were modified on the date of the President's message, *Conway v. Brooks*, 39 Pub. Lands Dec. 337, 339 (1910), to permit "agricultural entries . . . within a withdrawn area." *Instructions*, 40 Pub. Lands Dec. 418, 419 (1912). Entrymen received notice of the withdrawals by notations in the tract books of local land offices that the lands were "coal lands," *Instructions*, 35 Pub. Lands Dec. 681 (1907), pending final classification of the land by the USGS. *Nelson J. Littlejohn*, 44 Pub. Lands Dec. 48, 52 (1915).

Some entrymen, then, had entered before the withdrawals; others after. "In both instances, under the state of the laws then in force, the nonmineral claimant must have lost had the land ultimately been determined to be valuable for the coal deposits."

Instructions, 40 Pub. Lands Dec. at 419. President Roosevelt had no intention, however, of making these lands available for patent under the coal land laws either.

> The present coal law limiting the individual entry to 160 acres puts a premium on fraud by making it impossible to develop certain types of coal fields and yet comply with the law. It is a scandal to maintain laws which sound well, but which make fraud the key without which great natural resources must remain closed. The law should give individuals and corporations under proper government regulation and control . . . the right to work bodies of coal land large enough for profitable development. My own belief is that there should be provision for leasing coal, oil, and gas rights under proper restrictions.

S. Doc. No. 141 at 2. Congress was not yet prepared, however, to abandon the policy of encouraging development by placing publicly-owned resources into private hands, and another fourteen years would pass before the Mineral Lands Leasing Act of 1920 would turn President Roosevelt's "own belief" into statutory form.

In the meantime, opposition to the land withdrawals grew as frustrated entrymen found their homestead and desert land entries in limbo. But the withdrawals continued. Between July 1909 and June 1911 an additional 57 million acres of potential coal lands were withdrawn pending classification. 31ST ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 46 (1910); 32ND ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 65 (1911). Eventually withdrawals exceeded 140 million acres. President Roosevelt created within the USGS a Land Classification Board to, among

other tasks, permanently classify lands chiefly valuable for coal. Because lands so classified could only be available under the coal land laws (which Roosevelt hoped to amend), the Board received numerous requests to "de-classify" withdrawn lands. 34TH ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 149 (1913) (236 requests between 1909-13).

His state severely affected by Roosevelt's initial withdrawals, *see* S. REP. NO. 61-703, at 2 (1910) (discussing coal lands in Wyoming), Representative Mondell of Wyoming secured a legislative compromise. In general, the solution was to permit nonmineral entries to proceed to patent, subject only to the government's reservation of the "coal" and the right to mine it. Congress rejected proposals to reserve natural gas and other minerals, allowing rights to those minerals to pass to the patentee. (Pet. App. 146a-147a.)

More specifically, under the 1909 and 1910 Acts, entrymen were given an election. On the one hand, "[b]ecause of the considerable time involved in the actual classification of the lands, the Act[s] allowed the claimant to elect to receive a patent with a coal reservation." *Walter & Margaret Bales Mineral Trust*, 84 IBLA 29, 33 (1984). On the other hand, they could contest the preliminary classification of the withdrawn land. If they accepted the reservation, "no further inquiry [was] necessary respecting the coal character of the land." *Circular*, 38 Pub. Lands Dec. at 184. If they contested it, the process proceeded to the "taking of the final proof. . . ." *Id.* Those contestants were entitled under the 1909 Act to a "patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal," (Pet. App. 133a), and under the 1910 Act to "disprov[e] such [coal-lands] classification. . . ." (Pet. App. 135a-136a.) An unsuccessful contestant still was entitled to a patent, but subject to the reservation of coal. Some contested the withdrawals and

classifications, *e.g.*, *Ada I. Hindman*, 42 Pub. Lands Dec. 327 (1913); some did not.

Quite apart from the errors which Amoco's petition has already identified, this history shows the error of the Tenth Circuit's mechanical use of the presumption construing land grants in favor of the government grantor. *See Leo Sheep Co. v. United States*, 440 U.S. 668, 682-83 (1979) (harmonizing rules of interpreting public lands statutes). That presumption is simply one of many tools in divining congressional intent under the public land laws. And it has long been the rule that courts construing those laws must consider "the condition of the country when the acts were passed, as well as . . . the purpose declared on their face, and read all parts of them together." *Winona & St. Peter RR Co. v. Barney*, 113 U.S. 618, 625 (1885). Over all these considerations, however, lies the policy that public land laws inducing private citizens and corporations to undertake work and investment on the "immense and undeveloped public domain" are to receive "a more liberal construction" than that suggested by the rule "that public grants are construed strictly against the grantees. . . ." *United States v. Denver & Rio Grande RR Co.*, 150 U.S. 1, 14 (1893).

Here the "condition of the country when the [1909 and 1910] acts were passed" was one in which the nation had not yet moved to a policy of reserving rights to all minerals for later leasing, as it later did in the Stock-Raising Homestead Act of 1916 ("SRHA"). *See Watt v. Western Nuclear, Inc.*, 462 U.S. at 37. The 1909 and 1910 Acts were the first *"limited"* step in that direction (Pet. App. 147a (House colloquy) (emphasis added)), with the general rule remaining that all minerals the land was not "valuable for" were to pass to the patentee. As the Tenth Circuit recognized, the coal bed methane is distinct from the coal, Congress was aware that it existed and posed a threat to safe coal mining, and in 1909-10 the

methane was not forseeably producible. Therefore, the "more liberal construction" of intent compels the very opposite of the result the court of appeals reached under the presumption against the grantee. If Congress had intended to reserve minerals the land was not "valuable for," it would have done so expressly.

This case, then, is at the opposite end of the interpretive spectrum from *Watt v. Western Nuclear, Inc.*, where this Court invoked the presumption against federal land patentees — not, we would note, as the starting point of its review, but only after exhausting other tools of interpretation, including extensive analysis of Interior Department precedents. 462 U.S. at 59-60. The crucial difference in the cases is the differing contexts in which the SRHA and the 1909 and 1910 Acts were adopted, as this Court aptly explained.

> Unlike the preceding statutes containing mineral reservations, the SRHA was not limited to lands classified as mineral in character, and it did not reserve only specifically identified minerals.

Id. at 49.

The court of appeals made one attempt to be responsive to this distinction. It stated that the 1909 and 1910 Acts did not just reserve coal that could be, as of the date of enactment, mined economically. Instead, in the court's view, Congress reserved "all the coal." (Pet. App. 29a.) From this the court drew a sweeping inference.

> Congress knew there was indeterminate potential value in the reserved coal and intended to secure that value for the United States. Rather than indicating a limited reservation of coal to the United States, the legislative history suggests that Congress adopted an interpretation of coal which encompassed both the present and future economic value of coal for energy purposes, including value that could only be realized through advances in technology such as those which drive the present day exploration for CBM.

(Pet. App. 30a.)

As history and the statutory text disclose, however, the court significantly overstated what Congress reserved. The 1909 and 1910 Acts did not reserve all coal on federal lands. Instead, as to public lands "classified, claimed or reported as being valuable for coal" and public lands "withdrawn or classified as coal lands, or . . . valuable for coal . . . ," (Pet. App. 133a, 134a), they gave the "locator, selector, or entryman" the option of accepting a patent with a coal reservation or contesting whether the land in question was "chiefly valuable for coal" or otherwise "disproving such [coal lands] classification." (Pet. App. 133a, 136a.) Secretary Ballinger's 1909 regulations for the classification of coal lands made it evident that many lands with abundant coal deposits which were too deep for mining in that day were to be classified as "noncoal land." (Pet. App. 137a-139a.) Implementation of those regulations by USGS was expressly based on the view that coal lands were those where "coal can be commercially mined." 34TH ANNUAL REPORT OF THE DIRECTOR, USGS, TO THE SECRETARY OF THE INTERIOR 145-46 (1913). "[I]n determining whether a tract [was or was] not coal land the Department [was] guided by its coal classification regulations as to the workability of a deposit of coal occurring on such tract." *Nelson J. Littlejohn*, 44 Pub. Lands Dec. at 52.

In short, Congress reserved coal only on lands "chiefly" valuable for coal. (Pet. App. 133a.) Congress knew that rights even to known deposits of hardrock coal would continue to

pass to patentees under the 1909 and 1910 Acts, because those deposits were not valuable enough to be "chiefly valuable." *See, e.g., Ada I. Hindman*, 42 Pub. Lands Dec. at 329 (granting full patent without coal reservation despite ex parte affidavit from General Land Office "practical miner" that tract contained a "workable deposit" of coal). Congress did *not* follow a policy of reserving rights to coal of merely "indeterminate potential value." (Pet. App. 30a.) History, therefore, undermines the Tenth Circuit's inference that Congress intended to reserve rights to coal bed methane which, at the time, appeared to lack even potential value.

II.

SECURITY AND CERTAINTY OF LAND TITLES COMPEL DEFERENCE TO THE 1981 SOLICITOR'S OPINION

Modern deference principles give special weight to the views of agencies tasked with the administration of frequently complex legislation. Those views need not be expressed in legislative rules to receive a court's deference, but can be presented in less formal ways, as Amoco has explained. (Pet. 21); *see also Martin v. Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 157 (1991) (administrative litigation positions and interpretive rules). Modern deference under *Chevron* is founded on the perception that an agency's "expertise and experience with related statutes make it better able [than a court] to fit statutes with one another or to coordinate seemingly inconsistent enactments." Cass R. Sunstein, *Law and Administration after Chevron*, 90 COLUM. L. REV. 2071, 2116 (1990). The 1981 Solicitor's Opinion on coal bed methane is a perfect example of the application of that expertise and experience, drawing as it did on the scientific expertise of the Department's bureaus (*see also* Pet. App. 164a-166a) as well as the Department's long experience in administering the statutes analyzed. Amoco has correctly invited the Court to use this agency opinion as a means to address a split in the circuits on the scope of agency interpretive action to which deference is owed.

Chevron, to be sure, was a landmark; but it was not a revelation. It synthesized earlier strands of deference doctrine. Among the oldest of these is one highly relevant to this case and extremely important to these *amici*: the deference owed to the decisions of the Department of the Interior on interpretations of the public land laws. *United States v. Hammers*, 221 U.S. at 228. That deference is founded in part on the Department's familiarity with those laws, a familiarity almost always starting with the bills prior to their enactment and continuing into their day-to-day administration. But it is also founded on a consideration unique to the Department's administration of laws governing interests in real property: certainty of title.

> It is conceded to be of the utmost importance to the prosperity of the country that titles to land, and to minerals in them, shall be settled, and not be the subject of constant and ever-recurring disputes and litigation, to the disturbance of individuals, and the annoyance of the public. . . . The law places under the supervision of the [I]nterior [D]epartment . . . the control of all matters affecting the disposition of the public lands of the United States, and the adjustment of private claims to them under the legislation of [C]ongress.

Barden v. Northern Pacific RR Co., 154 U.S. 288, 326 (1894).

Here the Tenth Circuit's rejection of both the 1981 Solicitor's Opinion and the Department's consistent compliance

with that opinion is not only what is wrong with the court's opinion, it is also the very reason why certiorari is warranted at this time. The lack of deference has unsettled title to mineral rights in a vast area of the nation, to the disturbance of many tens of thousands of landowners, and to the disruption of the future development of methane resources in Wyoming and elsewhere. Deference to the Department assures consistent interpretation of the laws around the country.

In the final analysis, then, this Court can take comfort in knowing that the Solicitor's Opinion was right. But at this late date, what is perhaps more important is that, under the Solicitor's Opinion, the issue was settled.

CONCLUSION

Amici urge that the Court grant Amoco's petition for writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A — IDENTIFICATION OF INTERESTED PARTIES

The members of the Coal Bed Methane Ad Hoe Committee are as follows:

Karen Kennedy, Chairman (WIPA)
Barrett Resources, Inc. (Joe Barrett)
John Daly
Devon Energy Corporation (Gary McGee)
JoAnn Homer
Independent Petroleum Association of America (Ben Dillon)
Jolen Operating Company (David Fleischaker)
Craig Newman
Bryon Oedekoven
Fred Oedekoven
Joel Ohman
Jack Overstreet
Petroleum Association of Wyoming (Rick Robitaille)
Prima Oil and Gas Company (Walter Lunsford)
Redstone Resources, Inc. (Mike Caskey)
Hap Stuart
Tom Brown, Inc. (Mary Sharon Balakas)
Tom Throne
Western Gas Resources, Inc. (Krista Mutch)
Senator Steve Youngbauer

Persons or companies financially supporting the Coal Bed Methane Ad Hoc Committee are as follows:

Thomas Barlow
Bear Paw Energy
Ray Broyles
Nancy Butcher
Wilma Carter

Appendix A

Chandler & Associates
Citation Oil & Gas
Colorado Interstate Gas Company
Ola Criffield
Dossett & Dossett
Duncan Energy Company
Farleigh Oil Properties, Inc.
First Interstate Bank, Gillette, WY
C.F. Goddwin
Mark Haight
Dean Hall
Bud Hayden
Independent Production Company
J.N. Exploration
Mary Keeney
Kennedy Oil Company
Sandra Lange
Lynde Trust
L.Y. Ranch
Mad House, Inc.
Louis McBeth
Jack McCartney
Jerry Moore
Mildred Parnell
Nancy Parnell
Penneco
Petroglyph Operating Company
Frances Putnam
Rawhide Resources
RIM Operating Company
Larry Stuart
Jerry Taylor
David Tate

Appendix A

Torch Energy
Yates Petroleum Corporation